

# DHEC'S EXHIBIT 1

**THE STATE OF SOUTH CAROLINA BEFORE THE DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL CONTROL**

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**IN RE: TESI/FOXWOOD HILLS SUBDIVISION  
PUBLIC WATER SYSTEM NO. 3750025  
OCONEE COUNTY**

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**CONSENT ORDER  
04-058-DW**

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Total Environmental Solutions, Inc. (TESI) (Respondent) owns, operates and maintains the Foxwood Hills Subdivision public water system (PWS) located in Oconee County, South Carolina.

This Consent Order is entered into by the South Carolina Department of Health and Environmental Control (Department), and the Respondent with respect to the remediation of the operation and maintenance deficiencies of the Foxwood Hills Subdivision PWS.

**IN THE INTEREST OF RESOLVING THIS MATTER** without delay, the Respondent agrees to the entry of this Consent Order, but does not agree with the Findings of Fact or the Conclusions of Law as set forth by the Department in this Consent Order. The Department and the Respondent voluntarily enter into this Consent Order in settlement of a disputed claim.

**FINDINGS OF FACT**

1. TESI owns and operates a potable water distribution system at the Foxwood Hills Subdivision that serves seven hundred one (701) service connections and a population of approximately one thousand six hundred eighty-two (1,682). The system obtains water from the City of Westminster's water treatment plant.

2. On December 21, 2000, the Department received notification that the ownership of the referenced PWS would change from Johnson Properties, Inc. to TESI, effective December 23, 2000.
3. On December 12, 2001, Department staff conducted a Sanitary Survey inspection of the referenced PWS. A detailed report was sent to the Respondent outlining the deficiencies and the necessary corrective actions. The system received an overall rating of "Unsatisfactory" based on deficiencies in the following areas:
  - A. Fire Flow – No records were available to indicate that hydrants had been tested within the last three (3) years;
  - B. Valve/Hydrant Maintenance – A program was not in place to locate all valves and to properly maintain and exercise them;
  - C. Flushing Program – An adequate flushing program was not in place, and some areas within the system experienced water quality problems, such as low chlorine concentrations;
  - D. System Map – The map was not complete in that the location of all valves, hydrants, lines, line sizes, blow-offs, tanks and master-meter were not indicated;
  - E. Sample Siting Plan – All segments of the water system were not represented in the sample siting plan;
  - F. Sanitary Protection – The overflow pipe at the tank was not fitted with a flapper valve or a screen;
  - G. Storage Security – The fence that enclosed the elevated storage tank had a large hole in it. Also, barbed wire had been removed from part of the fence. In addition, the padlock was unlocked and the gate was open upon arrival for the Sanitary Survey. Furthermore, drums containing unknown substances and discarded solid wastes were found below the tank;
  - H. Bypass/Drain/Tap – The overflow was improperly sized;
  - I. Tank Maintenance – The exterior of the tank had not been maintained. The interior of the tank had not been inspected. Vegetation was overgrown under and around the tank;
  - J. General Operations and Maintenance Procedures Manual – The facility did not have a procedures manual of any type; and
  - K. Emergency Plan – The facility did not have an emergency plan of any type.
4. On February 12, 2002, Department staff conducted a Sanitary Survey inspection of the referenced PWS. A detailed report was sent to the Respondent outlining the deficiencies and the necessary corrective actions. The system received an overall rating of

"Unsatisfactory" based on deficiencies in the following areas:

- A. Valve/Hydrant Maintenance – A program was not in place to locate all valves and to properly maintain and exercise them;
- B. Flushing Program – An adequate flushing program was not in place, and some areas within the system experienced water quality problems, such as low chlorine concentrations;
- C. Sanitary Protection – The overflow pipe at the tank was not fitted with a flapper valve or a screen;
- D. Bypass/Drain/Tap - The overflow was improperly sized, was not extended to ground level and fitted with a flapper valve or non-corrosive screen, and a concrete pad was not below the overflow pipe to deter erosion problems;
- E. Tank Maintenance - The exterior of the tank was not maintained and the interior of the tank had not been inspected and repainted, if necessary; and
- F. General Operations and Maintenance Procedures Manual – Items in the existing manual were very vague and non-specific.

5. On April 16, 2002, the Department held an enforcement conference with the Respondent. The operation and maintenance issues were discussed. During this conference the Respondent stated that they had begun addressing many of the deficiencies reported in the February 12, 2002 Sanitary Survey. The possibility of a Consent Order was also discussed.

6. On April 3, 2003, Department staff conducted a Sanitary Survey inspection of the referenced PWS. A detailed report was sent to the Respondent outlining the deficiencies and the necessary corrective action procedures. The system received an overall rating of

"Unsatisfactory" based on the deficiencies in the following areas:

- A. Flow Meter – The master flow meter was not operating properly;
- B. Cross Connection Control Program – The program did not address how the system intends to identify existing cross connections and to prevent new cross connections from being created in the future;
- C. Leak Detection and Repair – Because the master flow meter was not operating properly, the Respondent could not determine the severity of water loss in the system;
- D. Flushing Program - Complete records for all actions and procedures taken are not maintained and problem areas within the system were not identified;
- E. Storage Sanitary Protection – The overflow pipe at the tank and the tank vent were not fitted with a flapper valve or a screen;

- F. Bypass/Drain/Tap Configuration – The overflow was improperly sized, was not extended to ground level and fitted with a flapper valve or non- corrosive screen, and a concrete pad was not below the overflow pipe to deter erosion problems;
  - G. Certified Distribution Operator – A certified distribution operator was not on staff or available; and
  - H. Tank Maintenance – The exterior of the tank was not maintained and the interior of the tank had not been inspected and repainted, if necessary. Currently, the tank is not in service.
7. The Department's April 3, 2003 Sanitary Survey report, mailed to the Respondent on April 7, 2003, requested that the Respondent submit a letter to the Department that addressed the deficiencies by April 30, 2003. The Department agreed to accept the letter on May 1, 2003.
8. On May 1, 2003, the Department received a response to this report in a letter contesting each of the deficiencies cited by the Department and indicating that the Respondent was addressing many of these deficiencies.
9. On June 24, 2003, the Department held an enforcement conference with the Respondent. The operation and maintenance issues were discussed. The Respondent had begun addressing many of the deficiencies reported in the April 3, 2003 Sanitary Survey. The possibility of a Consent Order was also discussed.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Department, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 et seq. (2002), reaches the following Conclusions of Law:

1. The Respondent violated the State Primary Drinking Water Regulations, 24A S.C. Code Ann. Regs. 61-58.7 (Supp. 2003), in that it failed to properly operate and maintain its PWS.

2. The State Safe Drinking Water Act, S.C. Code Ann. § 44-55-90(b) (2002), provides for a civil penalty not to exceed five thousand dollars (\$5,000.00) a day per violation for any person violating the State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80 (2002).

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED**, pursuant to the State Safe Drinking Water Act, S.C. Code Ann. §§ 44-55-10 et seq. (2002), that the Respondent shall:

1. Henceforth, operate and maintain the PWS in accordance with all applicable State and Federal laws and regulations.
2. Within sixty (60) days of the execution date of this Order, the Respondent shall correct all deficiencies discussed in Findings of Fact number six (6), items A through G, per the specifications as detailed in the Department's report of the Respondent's April 3, 2003 Sanitary Survey, and schedule an inspection with the Appalachian I Environmental Quality Control Office at (864) 260-5569 to verify that these deficiencies have been eliminated.
3. Within sixty (60) days of the execution date of this Order, have the storage tank evaluated by an engineer registered in the State of South Carolina and submit a Corrective Action Plan (CAP) which includes a schedule of compliance for repairing and maintaining this storage tank and bringing it back into service. This CAP will be evaluated by the Department and, upon approval by the Department, will become an enforceable part of this Order.
4. Within ninety (90) days of the execution date of this Order, the Respondent shall have prepared a thorough General Operations and Maintenance Procedures Manual which addresses daily operations and maintenance, to include but not be limited to, written

procedures and documentation for specifically addressing the deficiencies noted in the December 12, 2001, February 12, 2002, and the April 3, 2003 Sanitary Survey reports. A copy of this manual must be available for inspection by the Department at all times.

5. Within thirty (30) days of the execution date of this Order, submit to the Department a civil penalty in the amount of two thousand eight hundred dollars (\$2,800.00).

**IT IS FURTHER ORDERED AND AGREED** that if any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity pursuant to the approved schedule, the Respondent shall notify the Department in writing at least five (5) days before the scheduled date, if practicable, as determined by the Department. The Respondent shall describe in detail the anticipated length of the delay, the precise cause or causes of delay (if ascertainable), the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Respondent proposes that those measures will be implemented.

The Department shall provide written notice to the Respondent as soon as practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, or explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to

action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by the Respondent to exercise due diligence in obtaining governmental permits or performing any other requirement of this Order or any procedure necessary to provide performance pursuant to the provisions of this Order. Any extension shall be granted at the sole discretion of the Department, incorporated by reference as an enforceable part of this Consent Order, and, thereafter, be referred to as an attachment to the Consent Order.

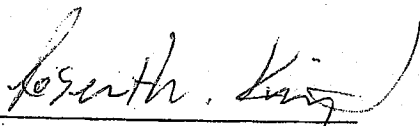
**IT IS FURTHER ORDERED AND AGREED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the State Safe Drinking Water Act, S.C. Code Ann. § 44-55-80(a) (2002), to include the assessment of additional civil penalties.

**PURSUANT TO THIS ORDER**, all requirements to be submitted to the Department shall be addressed as follows:

Wanda Ramsey  
Bureau of Water-Enforcement Division  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, S.C. 29201

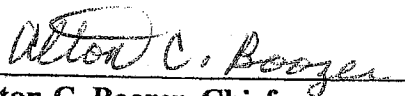


THE SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL



Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

Date 4/06/04



Alton C. Boozer, Chief  
Bureau of Water

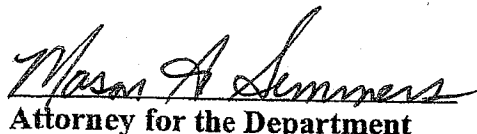
Date 03/31/04

WE CONSENT:



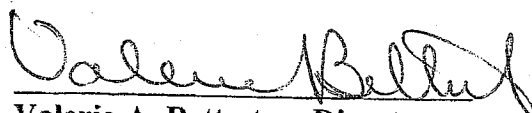
Paul Mader  
TESI/Foxwood Hills S/D PWS

Date March 26, 2004



Attorney for the Department

Date 3-31-04



Valerie A. Betterton, Director  
Water Enforcement Division

Date 3-31-04